



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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OFFICE OF
AIR AND RADIATION

MEMORANDUM

SUBJECT: Civil Penalty Policy for Incorrect Aftermarket
Catalytic Converter Applications

FROM: Marc R. Hillson, Chief *Marc R. Hillson*
Investigations and Enforcement Branch

TO: Richard G. Kozlowski, Director *O/K*
Field Operations and Support Division *AK 4/21/88*

On April 14, 1988, a conference call meeting was held between Erv Pickell, Rich Ackerman, Marc Hillson, Rick Friedman, and Ken Meade to discuss the appropriate civil penalty settlement policy for cases involving incorrect installations of aftermarket catalytic converters. The discussion centered around the perception that a 20/20 settlement for a \$2,500 per violation case was not appropriate in these cases.

Several reasons were given for this perception: (1) The environmental harm in these cases is not as great as that in other tampering cases because a converter was in fact installed on the vehicle; (2) There was a feeling that if these cases went to litigation a judge would not be inclined to impose a very high civil penalty because of the relative minor degree of environmental harm, therefore we need to have a realistic policy to encourage settlement administratively; (3) The respondents in the vast majority of these cases are small muffler shop owners who couldn't afford to pay \$1,000 per violation in addition to installing the correct converter.

All of the participants agreed that a better policy in these cases would be to cite the statutory \$2,500 per violation language in the NOV, but state that based on respondents history of compliance with the regulations, the size of the respondents' business, etc., EPA has decided to propose a civil penalty of \$1,000 per violation. The settlement policy would then be as follows: The case attorney would be given a great deal of latitude to determine the egregiousness of the violations. If circumstances showed that the violations were not a deliberate disregarding of the policy, but were in fact due to a misreading of the parts catalogue or a parts availability problem, or if a

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financial hardship claim was proven, the attorney would have the discretion to settle for 20/20 based on the \$1,000 per violation proposed penalty. However, if the attorney discovered that the violations amounted to willful disregard of the policy or a deliberate misapplication the attorney should require more than a 20/20 settlement.

If a respondent has one or more prior violations the NOV penalty amount will be the full \$2,500 per violation. Settlement negotiations will follow the traditional process with a 20/20 settlement being the bottom line. In addition, if a case does not settle and is referred to the Department of Justice, the Litigation Report will seek the full \$2,500 per violation civil penalty.

It was agreed that this approach seemed to be the best as far as being equitable and workable while fitting into agency civil penalty guidelines.

Aftermarket catalyst misapplication violations which are documented not as a result of warranty cards (e.g., by inspectors in the field) should be pursued as violations regardless of the number of violations found. That is, such violations are not subject to the "five or greater" rule discussed above.

Attachment

Prepared by: Rackerman:pl:FOSD:12-20:88

VEHICLES WITH ONLY THREE-WAY OR DUAL BED CONVERTERS

<u>Manufacturer</u>	<u>Model Year(s)</u>	<u>Models</u>
<u>General Motors:</u>	(Buick, Chevrolet, Oldsmobile, Pontiac, Cadillac, GMC, GEO)	
Passenger Cars -	1981 - present	All
Light Trucks -	1983 - 1986	All that have emission label "ORC"
	1987	All except 2.8L engines
	1988 - present	All
<u>Chrysler:</u>	(Chrysler, Dodge, Plymouth)	
Passenger Cars -	1981 - 1982	All Imperials; New Yorkers and Newports with 5.2L-4Bb1
		(V4 in engine code)
	1982	All Omnis; all Horizons; Turismos with 1.7L engines
	1983	Cordoba, New Yorker, Fifth Avenue, Omni, Horizon, Imperial, Aries, Reliant, Town & Country, Turismo models with 1.7L, 2.2L, or 5.2L engines
	1984	All, except New Yorkers with 2.6L (Cal) engines
	1985 - present	All
Light Trucks -	1983 - 1985	Cal models with 2.2L & 5.2L engine
	1985 - 1986	Cal and Hi-Alt models with 2.2L & 5.2L engines; Fed model with 3.9L engine
	1987	Models with 2.2L engines (except mini vans); Hi-Alt and Cal models with 3.9L, 5.2L engines; and models with 2.5L, 3.0L engine
	1988	All, except 5.9L (Fed)
	1989 - present	All

<u>Manufacturer</u>	<u>Model Year(s)</u>	<u>Models</u>
<u>AMC/Jeep/Eagle</u>	1981	Cal Concord, Eagle and Spirit with 151CID and 25CID engines
	1982	Cherokee, CJ-5/7, Concord Eagle, J-10, Spirit models with CAM151T2FC12, CAM151T2FC46, CAM258T2HE84, and CAM258V2HE50 engine families
	1983	All, except Cherokee, CJ-5, J-20 with DAM151T2ABCO and DAM360T2AAX8 engine families
	1984 - 1986	All, except Cherokee, XJ, Comanche Fed models with 2.8L engines
	1987 - present	All
<u>Acura</u>	1986 - present	All
<u>Audi</u>	1984 - present	All
	1981 - 1983	All, except diesel engines for 4,000, 5,000, 4000S and 5000S models
<u>BMW</u>	1980 - present	All
<u>Ferrari</u>	1985 - present	All
<u>Fiat</u>	1981 - 1982	All
<u>Honda</u>	1984	All, except 1.3L engine
	1985 - present	All
<u>Hyundai</u>	1986 - present	All
<u>Infiniti</u>	1990 - present	All

<u>Manufacturer</u>	<u>Model Year(s)</u>	<u>Models</u>
<u>Isuzu</u>		
Passenger Cars -	1982 - present	All I-Mark and Impulse
Light Trucks -	1988 - present	All
<u>Jaquar</u>		
	1979 - 1982	Some XJ6 models
	1983 - 1988	All
	1989	XJ6 & XJS models
	1990 - present	All
<u>Lamborghini</u>		
	1987 - present	Countach only
<u>Lexus</u>		
	1990 - present	ES250 & LS400 models
<u>Lotus</u>		
	1985 - present	Esprit Turbo
<u>Maserati</u>		
	1985 - 1987	Biturbo only
	1988	2.2L only
	1989	2.8L only
	1990 - present	222E & 228 only
<u>Mazda</u>		
Passenger Cars -	1981 - 1982	RX-7
	1983 - present	All
Light Trucks -	1983 - present	All
<u>Mercedes Benz</u>		
	1980 - present	All
<u>Mitsubishi</u>		
Passenger Cars -	1983	Starion.
	1984	Starion, Colt, Cordia, Tredia
	1985 - present	All
Light Trucks -	1984 - present	All

<u>Manufacturer</u>	<u>Model Year(s)</u>	<u>Models</u>
<u>Nissan/Datsun</u>		
Passenger Cars	- 1982	Maxima & 280ZX
	1983	280ZX, Maxima, Sentra, Pulsar (Cal)
	1984 - present	All
Light Trucks	- 1985 - present	All
<u>Peugot</u>	1982 - present	All
<u>Porsche</u>	1979	924 & 928 only
	1980 - 1985	911 only
	1986	All, except 928
	1987 - present	All
<u>Renault</u>	1980	All Cal models except LeCar
	1981 - 1983	All models except LeCar
	1984 - 1988	All
<u>Rolls Royce</u>	1985 - present	All
<u>Rover</u>	1980	3500 model only
<u>Saab</u>	1979 - present	All
<u>Subaru</u>	1981 - 1982	All
	1983	2wd only (Fed)
	1984	All, except Turbo charged models
	1985	All, except 4wd Brat & carbureted sedan & wagan 4wd (Fed)
	1986 - present	All

<u>Manufacturer</u>	<u>Model Year(s)</u>	<u>Models</u>
<u>Suzuki</u>	1984 - present	All, except 1987 Turbo Sprint (sold under GM)
<u>Toyota</u>		
Passenger Cars -	1980	Cressida & Supra only
	1981 - 1982	All, except Tercel & Starlet
	1983 - present	All
Light Trucks -	1983 - 1984	Land Cruiser only
	1985	2.0L & 2.4L, 116 HP (Fed) engines
	1986 - 1987	All, except some 103HP engines. Refer to emissions label
	1988 - 1989	All, except 102HP engines
	1990 - present	All
<u>Triumph</u>	1980	TR-7 & TR-8 Fuel Injected only
	1981	All
<u>Volkswagon</u>		
Passenger Cars -	1981 - 1983	All
	1984	All except Rabbits with EVW1.7VIFAB8 engine family
Light Trucks	1985 - present	All
	1985 - present	Vanagan

<u>Manufacturer</u>	<u>Model Year(s)</u>	<u>Models</u>
<u>Volvo</u>	1979	6-cylnider
	1980 - present	All
	1986 - 1987	All
	1988	GV model
	1989 - present	All
<u>Yugo</u>		